IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RODNEY REDMOND,

Plaintiff,

v.

DAWN LAURENT, NICHOLAS BUHR,
DAN NORGE, DR. KALLAS, MICHAEL MEISNER,
TIM DUMA, TODD CALLISTER,
KAREN ANDERSON, DR. ANKARLO, GARY MAIER,
DONALD MORGAN, JANEL NICKEL, CATHY JESS,
RODNEY KRATZ, C.O. PRESTON, SGT. ROYCE,
SGT. GEE and C.O. PARENTEAU,

Defendants.

OPINION AND ORDER

13-cv-145-wmc

Plaintiff Rodney Redmond has filed this proposed civil action under 42 U.S.C. § 1983, concerning the conditions of his confinement at the Columbia Correctional Institution ("CCI"). Redmond has been found eligible to proceed under the *in forma pauperis* statute and has made an initial partial payment of the filing fee as required by the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(b)(1).

Having filed an amended version of his complaint, Redmond requests leave to proceed, but before allowing him to do so, the court is required by the PLRA to screen the complaint to determine whether the proposed action is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A. In addressing any *pro se* litigant's complaint, the court must read the allegations generously, reviewing them under "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404

U.S. 519, 521 (1972). After examining the amended complaint under this lenient standard, the court will grant Redmond leave to proceed with some, but not all, of his claims.

ALLEGATIONS OF FACT

For purposes of this order, the court accepts all well-pled allegations as true and assumes the following probative facts.[1]

A. Parties

Plaintiff Rodney James Redmond is presently incarcerated by the Wisconsin Department of Corrections ("WDOC") as the result of felony convictions for robbery with threat of force and armed robbery with threat of force. Redmond also has a felony conviction for throwing or expelling bodily substances on correctional officers (two counts) while in prison. Due to his record of disciplinary infractions while in prison and his history of mental illness, Redmond has been in custody in the disciplinary segregation or clinical observation unit at CCI for most of the time pertinent to this complaint.[2]

Most of the defendants in this case are employed by WDOC as administrators, mental health care providers and security personnel at CCI. Dawn Laurent supervises

[1] The court has supplemented the pleadings with facts about his underlying conviction from the electronic docket that is available at Wisconsin Circuit Court Access, http://wcca.wicourts.gov (last visited January 29, 2014). Unless otherwise indicated below, the court draws all other facts from Redmond's amended complaint and the exhibits attached to that pleading. *See* FED. R. CIV. P. 10(c); *see also Witzke v. Femal*, 376 F.3d 744, 749 (7th Cir. 2004) (explaining that documents attached to the complaint become part of the pleading, meaning that a court may consider those documents to determine whether plaintiff has stated a valid claim).

[2] At this point of the proceedings, it is not clear whether Redmond's placements in disciplinary segregation stemmed from misconduct or were for clinical observation, although Redmond suggests that conduct reports were written against him in connection with the incidents outlined further below.

the psychological services unit ("PSU"). Gary Maier is a psychiatrist assigned to disciplinary segregation unit 1 (DS-1), while Todd Callister is a psychiatrist assigned to disciplinary segregation unit 2 (DS-2).[3] Drs. Nicholas Buhr and Dan Norge are psychological associates or mental health clinicians assigned to DS-1 and DS-2, respectively. Karen Anderson is the health services unit (HSU) manager. Michael Meisner is the warden and Tim Duma is a deputy warden. As the security director at CCI, Janel Nickel is charged with implementing, enforcing, and supervising security policy and staff. Donald Morgan is an administrative captain and supervisor of the disciplinary segregation units at CCI. Rodney Kratz, C.O. Preston, Sgt. Royce, Sgt. Gee, and C.O. Parenteau are correctional officers assigned to DS-2.

In addition, Redmond sues three defendants who do not work at CCI. Dr. Kallas is a mental health provider at the Wisconsin Resource Center, which is located in Winnebago. Dr. Ankarlo is an administrative official who serves as the mental health director for WDOC in Madison. Cathy Jess is also an administrative official working for WDOC in Madison as a policymaker for the Division of Adult Institutions.

B. Redmond's Mental Health Classification and Treatment

For purposes of classification, Redmond has been designated with a mental health code that indicates a "serious mental illness." According to this particular mental health code ("MH-2"), Redmond is considered "functional," but he requires clinical monitoring. Redmond suffers from a variety of ailments, including: polysubstance dependence in a

[3] Redmond asserts that Callister is a psychologist. Given the allegation that Callister was in charge of prescribing medication, the court assumes that Callister is a psychiatrist for purposes of screening.

controlled environment; an unspecified learning disorder; depression; anxiety; and a personality disorder with "antisocial" and "borderline" features. Redmond also has been prescribed a variety of psychotropic medications ("depakote, Zoloft, risperid[one], Prozac, valproic acid, etc.") and is deemed a moderate to high risk for suicide. During his incarceration, Redmond has been placed under clinical observation on a frequent basis, but he has never been placed in the special management unit (SMU) at CCI.[4]

Among other misconduct, Redmond also has a history of hoarding pills that have been prescribed to treat his mental disorders. On December 3, 2011, Redmond overdosed on prescription medication and required hospitalization. Following his suicide attempt, defendant Maier switched Redmond's prescriptions to liquid medication.

From January 2012 through May 2012, Redmond was assigned to DS-1, reportedly as the result of disciplinary misconduct. During that time, Drs. Buhr and Norge were responsible for day-to-day monitoring of mentally-ill inmates housed in DS-1 and DS-2, respectively. Buhr and Norge also performed weekly rounds or wellness checks, which entail conversing with inmates at their cell doors. In addition to the care he received from Buhr and Norge during this time, Redmond was seen for one-on-one treatment by mental health providers at the PSU and he participated in a books-on-tape

[4] The court understands from previous cases in this district that CCI is a maximum security facility that houses a large number of inmates with mental illness and a high percentage of inmates with assaultive histories. *See, e.g., Moton v. Grams*, 10-cv-666 (W.D. Wis. [Dkt. # 48, at 4] June 25, 2012). CCI has three segregation units: DS-1, DS-2 and HU-7. DS-1 is the most secure segregation unit where an inmate may go when he is (1) first put into segregation, or (2) having behavioral problems that require "control status or clinical observation status." DS-2 is a transition segregation unit, where an inmate will go when he has been in DS-1 and has demonstrated that he can maintain appropriate behavior or does not require the heightened security level found in DS-1. HU-7 appears to be the special management unit that houses vulnerable inmates, including those who are essentially non-functional due to serious mental impairments.

program, but he was not allowed to attend any educational programs while in segregated confinement.

In June 2012, Redmond was released from DS-2 to the general population at CCI. Shortly after, Redmond was referred to the WRC to participate in a "coping skills" treatment program. When Redmond arrived at WRC on August 29, 2012, a physician switched Redmond's prescription medication from liquid back to pill form. Less than a month later, Redmond was kicked out of the coping skills program by Dr. Kallas. According to Dr. Buhr, Redmond was removed from that program because of "his behavior and unwillingness to focus on the coping skills material[.]" (Dkt. # 10, Exhibit, ICE Report CCI-2012-22314). Redmond contends, however, that he was kicked out because he suffers from undiagnosed attention deficit disorder ("ADD").

Redmond returned to CCI on September 20, 2012, and was assigned to DS-1. The following day, Redmond was transferred to DS-2. At this time, Dr. Callister continued Redmond's medication regimen in pill form.

In September 2012, defendant Kratz worked the first shift on DS-2. On September 21, 22, 26, 27, 28, 29 and 30, Kratz distributed controlled medications to inmates on the B-upper and B-lower cell ranges. Redmond, who was housed on the B-lower range on those days, accepted 500 mgs of depakote from Kratz on the above dates. On each occasion, Redmond essentially alleges that Kratz did not watch to ensure that Redmond actually swallowed his medication. As a result, Redmond was able to hoard those pills.

Also in September 2012, defendant Preston worked the second shift on DS-2. On

September 30, Preston distributed medications at bed-time on the B-lower range, allegedly giving Redmond Zoloft, depakote, and some kind of sleeping pill without watching him swallow the pills. Again, Redmond was able to hoard this medication.

On October 7, 2012, defendant Parenteau was in charge of conducting the final mail pickup on the B-lower cell range of DS-2. At approximately 9:30 p.m., Redmond allegedly informed Parenteau that he needed to go into observation status or he would kill himself. Parenteau allegedly responded, "Wait until third shift, so I don't have to do the paperwork." Redmond waited until 3rd shift and then consumed enough of his previously-hoarded pills to overdose. He was taken to the local emergency room for treatment, returning to CCI two days later. Upon his return to CCI, Redmond was placed in DS-1 and his medications were changed to crushed pills or liquid form.

C. Redmond's Claims

In his amended complaint, Redmond contends that Parenteau ignored his threats of self-harm on October 7, 2012, before Redmond attempted suicide. Redmond contends further that Callister negligently approved distributing his medication in pill form despite Redmond's history of overdosing. Redmond also maintains that security officers and their supervisors negligently failed to ensure that he swallowed his pills as prescribed. In addition to these claims, Redmond contends that the overall quality of the mental health care for inmates assigned to segregation at CCI is inadequate. Redmond asserts further that he was unfairly prevented from participating in the coping skills program and other unspecified programs because of his mental illness, as well as his undiagnosed ADD. In addition to declaratory and injunctive relief, Redmond seeks

compensatory and punitive damages for violations of the Eighth Amendment, the Americans with Disabilities Act, and state law negligence theories.

OPINION

Federal Rule of Civil Procedure 8(a) requires a "'short and plain statement of the claim' sufficient to notify the defendants of the allegations against them and enable them to file an answer." *Marshall v. Knight*, 445 F.3d 965, 968 (7th Cir. 2006). A complaint may be dismissed for failure to state a claim where the plaintiff alleges too little, failing to meet the minimal federal pleading requirements. While it is not necessary for a plaintiff to plead specific facts, he must articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). At the other end of the spectrum, a plaintiff may provide so much detail as to plead himself out of court. *See Tamayo v. Blagojevich*, 526 F.3d 1074, 1086 (7th Cir. 2008); *see also Jackson v. Marion County*, 66 F.3d 151, 153-54 (7th Cir. 1995) ("[A] plaintiff can plead himself out of court by alleging facts which show that he has no claim, even though he was not required to allege those facts. Allegations in a complaint are binding admissions, and admissions can of course admit the admitter to the exit from the federal courthouse." (citations omitted)). In that respect, when a plaintiff pleads facts showing that he does not have a claim, the complaint should be dismissed "without further ado." *Thomson v. Washington*, 362 F.3d 969, 970-71 (7th Cir. 2004).

I. Eighth Amendment -- Failure to Protect from Self-Harm

The Eighth Amendment, which prohibits "punishment" that is "cruel and unusual," imposes a duty on prison officials to provide "humane conditions of

confinement" by ensuring that inmates receive adequate food, clothing, shelter, and medical care. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). Prison officials also must ensure that "reasonable measures" are taken to guarantee inmate safety and prevent harm. *Id*. To state an Eighth Amendment based on a failure to prevent harm, an inmate must demonstrate that (1) the harm that befell the prisoner was objectively, sufficiently serious and a substantial risk to his health or safety; and (2) the individual defendants were deliberately indifferent to that risk. *Id*.; *see also, e.g., Collins v. Seeman*, 462 F.3d 757, 760 (7th Cir. 2006) (citing *Matos ex. Rel. Matos v. O'Sullivan*, 335 F.3d 553, 556 (7th Cir. 2003) (citation omitted)).

It goes without saying that suicide, attempted suicide and other acts of self-harm pose a "serious" risk to an inmate's health and safety. *See Collins*, 462 F.3d at 760 (quoting *Sanville v. McCaughtry*, 266 F.3d 724, 733 (7th Cir. 2001)); *see also Rice ex. Rel. Rice v. Correctional Medical Servs*., 675 F.3d 650, 665 (7th Cir. 2012) ("[P]rison officials have an obligation to intervene when they know a prisoner suffers from self-destructive tendencies."). Where the harm at issue is a suicide or attempted suicide, deliberate indifference requires "a dual showing that the defendant: (1) subjectively knew the prisoner was at substantial risk of committing suicide and (2) intentionally disregarded that risk." *Collins*, 462 F.3d at 761 (citing *Matos*, 335 F.3d at 557); *see also Estate of Novack ex rel. Turbin v. County of Wood*, 226 F.3d 525, 529 (7th Cir. 2000) (defendant must be aware of the significant likelihood that an inmate may imminently seek to take his own life and must fail to take reasonable steps to prevent the inmate from performing the act).

As outlined above, Redmond claims that Parenteau violated his constitutional rights under the Eighth Amendment by failing to protect him from attempting suicide on October 7, 2012. In that respect, Redmond claims that he told Parenteau that he was suicidal, but that Parenteau essentially brushed off his plea for help without taking any steps to assess the credibility of the threat or to ensure that Redmond was placed under observation. A few hours later, Redmond overdosed on medication and was taken to the hospital. Assuming that his allegations are true, as the court must at this stage of the lawsuit, Redmond states an Eighth Amendment claim against Parenteau for failure to protect him from self-harm. Accordingly, Redmond may proceed with this claim.

II. Negligence -- Administering Pill-Form Medication

Redmond alleges further that he was able to hoard the pills that he used to attempt suicide on October 7, 2012, because of negligence on the part of Dr. Callister. Redmond emphasizes that he was previously put on liquid medication for his own safety after overdosing on pill-form medication in December 2011. Although doctors at WRC changed his prescription to pill form in August 2012, Redmond maintains that Callister erred by continuing him on pill-form medication upon his return to CCI on September 20, 2012, because this created a condition in which it was reasonably foreseeable that he would once again hoard his pills and attempt suicide by taking them all at once.

To prevail on a claim for negligence in Wisconsin, a plaintiff must prove the following four elements: (1) a breach of (2) a duty owed (3) that results in (4) injury or injuries, or damages. *Paul v. Skemp*, 242 Wis. 2d 507, 520, 625 N.W.2d 860, 865 (2001) (citing *Nieuwendorp v. American Family Ins. Co.*, 191 Wis. 2d 462, 475, 529

N.W.2d 594 (1995)). At common law, a prison employee's negligence in the treatment of those inmates placed under his care may give rise to liability to the prisoner for any resulting loss. *Brownelli v. McCaughtry*, 182 Wis. 2d 367, 514 N.W.2d 48, 50 (1994).

Although Redmond's allegations arguably state a cognizable tort claim under Wisconsin law, they also indicate that the treatment providers were acting mainly in a discretionary, as opposed to ministerial, capacity. Exhibits reflect that Dr. Callister authorized pill-form medication for Redmond in September 2012, because Redmond was not reporting suicidal ideations at that time. This is fatal to Redmond's negligence claim against Dr. Callister.

Subject to certain exceptions, "state officers and employees are immune from personal liability for injuries resulting from acts performed within the scope of their official duties." *Umansky v. ABC Ins. Co.*, 2009 WI 82, ¶10, 319 Wis. 2d 622, 769 N.W.2d 1 (2009). In order to state a claim for relief based on the negligent conduct of a state employee, the activity alleged in the complaint must come within one of the exceptions to immunity. *Broome v. Wisconsin Dep't of Corrections*, 2010 WI App 176, ¶ 10, 330 Wis. 2d 792, 799, 794 N.W.2d 515 (citing *C.L. v. Olson*, 143 Wis. 2d 701, 725, 422 N.W.2d 614 (1988)). The exception potentially applicable in this case is for acts performed while performing a "ministerial duty." *Id*. The ministerial duty exception applies when a duty is "absolute, certain and imperative, involving merely the performance of a specific task when the law imposes, prescribes and defines the time, mode and occasion for its performance with such certainty that nothing remains for judgment or discretion." *Umansky*, 319 Wis. 2d 622, ¶ 11, 769 N.W.2d 1 (citation

omitted).

Decisions about whether a patient needs a particular type of treatment are decidedly matters of medical judgment. *Estelle*, 429 U.S. at 107 (noting that "the question whether an [x-ray] or additional diagnostic techniques or forms of treatment is indicated is a classic example of a matter for medical judgment."). Because the decision to authorize pill-form medication involved the exercise of medical judgment, the action involved does not meet the definition of ministerial. Redmond does not allege facts showing that his claim falls within any other exception to state-employee immunity. This constitutes an insurmountable affirmative defense to liability. Accordingly, Redmond may not proceed with his negligence claim against Dr. Callister.

III. Negligence -- Failure to Ensure that Redmond Swallowed his Medication

Redmond also alleges that in late September 2012, officers Preston and Kratz neglected to ensure that he had swallowed his prescribed medication. Redmond alleges further that he alerted two high-level security officers (Morgan and Nickel) and two intermediate-level supervisors (Sergeants Gee and Royce) of this problem, but that none of these supervisors intervened or took any steps to ensure that he was taking his medication in the proper dose at the proper time. Redmond, who reportedly used this hoarded medication to attempt suicide on October 7, 2012, appears to state a *prima facie* case of negligence against all six of these defendants. Because dispensing prescribed medication does appear to qualify as a "ministerial duty" for purposes of state-employee immunity, *see Umansky*, 2009 WI 82, ¶ 10, the court will allow a negligence claim to proceed against these defendants (Preston, Kratz, Morgan, Nickel, Gee and Royce) in

their personal capacity.

IV. Eighth Amendment -- Inadequate Mental Health Care

Redmond further contends that he was denied adequate mental health care by providers at CCI, particularly by Laurent and Buhr, who reportedly refused to implement a treatment plan for him. Redmond also claims that CCI lacks adequate staff and funding to provide the treatment that he needs. Redmond does not specify what treatment plan or program was required. Nevertheless, Redmond contends that policymakers (Laurent, Jess, Dr. Ankarlo, Warden Meisner and Deputy Warden Duma) have violated his rights under the Eighth Amendment by providing a level of mental health care that was generally inadequate.

A prison official violates the Eighth Amendment's prohibition against cruel and unusual punishment when his conduct demonstrates deliberate indifference to a prisoner's serious medical needs, thereby constituting an "unnecessary and wanton infliction of pain." *Wilson v. Seiter*, 501 U.S. 294, 297 (1991) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). "In order to state a cognizable claim [under the Eighth Amendment], a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *Estelle*, 429 U.S. at 106. A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person." *Johnson v. Snyder*, 444 F.3d 579, 584-85 (7th Cir. 2006); *Gutierrez v. Peters*, 111 F.3d 1364, 1373 (7th Cir. 1997).

The Eighth Amendment applies not only to the physical needs of prisoners, but to their mental health needs as well. *See, e.g.*, *Rice ex. Rel. Rice v. Correctional Medical Servs.*, 675 F.3d 650, 665 (7th Cir. 2012); *Belbachir v. County of McHenry*, 726 F.3d 975, 980 (7th Cir. 2013). Assuming that Redmond suffers from serious mental illness that meets the definition of a serious medical or mental health need, his general allegations do not demonstrate that he was denied constitutionally adequate care with the requisite deliberate indifference.

To show deliberate indifference, a plaintiff must establish that the defendants were "subjectively aware of the prisoner's serious medical needs and disregarded an excessive risk that a lack of treatment posed" to his health. *Wynn v. Southward*, 251 F.3d 588 (7th Cir. 2001). When a plaintiff receives some form of medical care, he can show deliberate indifference only if he can prove that the care he received was "'so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate' his condition." *Greeno v. Daley*, 414 F.3d 645, 654 (7th Cir. 2005) (quoting *Snipes v. DeTella*, 95 F.3d 586, 592 (7th Cir. 1996)). Mere disagreement with a doctor's medical judgment, inadvertent error, negligence, malpractice or even gross negligence in providing treatment is insufficient to establish deliberate indifference. *Edwards v. Snyder*, 478 F.3d 827, 831 (7th Cir. 2007).

By Redmond's own admission, he received medication and regular cell-side consultations by Drs. Buhr and Norge while assigned to DS-1 and DS-2. Exhibits provided along with the pleadings reflect that Redmond also received individual counseling sessions outside his cell and group sessions with mental health providers

during the same period as the alleged events in the complaint occurred. (Dkt. # 10, ICE Report CCI-2012-22314). Although Redmond was able to participate in a books-on-tape program, he was unable to attend other programs while he was confined in disciplinary segregation. Once Redmond was released to the general population, however, he was promptly approved for a treatment program on coping skills at WRC.

Absent specific facts illustrating how his prescribed treatment regimen was inappropriate, Redmond's general dissatisfaction with the level of care provided is not sufficient to state a claim for deliberate indifference. *See, e.g., Johnson v. Doughty*, 433 F.3d 1001, 1013 (7th Cir. 2006) (noting that mere disagreement with a doctor's chosen course of treatment is generally insufficient to state a claim of deliberate indifference). Accordingly, the court will deny Redmond leave to proceed with his claims that he was denied adequate medical care with deliberate indifference. Redmond may file an amended complaint concerning his claim concerning the conditions of his confinement at CCI in 2012, provided that he supply, at a minimum, details about what specific type of treatment plan or program he requested and why it was needed.

V. Violations of the Americans with Disabilities Act

Finally, Redmond alleges that he was kicked out of the coping skills program by Dr. Kallas at the WRC in September 2012, and that he was denied meaningful access to other, unspecified educational or mental health programs, all because of his alleged disability or disabilities (*i.e.*, mental illness combined with undiagnosed ADD). In particular, Redmond claims that "[Dr. Maier], Anderson and Dr. Kallas have failed to "accommodate mentally ill inmates in segregation, with few exceptions, with medication

for ADD, which is needed for Redmond to participate in the one group offered, as well as schooling."

Title II of the Americans with Disabilities Act (the "ADA") provides that qualified individuals with disabilities may not "by reason of . . . disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity." 42 U.S.C. § 12132. State prisons are considered "public entities," *Penn. Dep't of Corr. v. Yeskey*, 524 U.S. 206-09 (1998), and state prison officials can be sued under the ADA for declaratory and injunctive relief, *Radaszewski ex rel. Radaszewski v. Maram,* 383 F.3d 599, 606 (7th Cir. 2004).

Even so, plaintiff's claim against Dr. Kallas cannot proceed in *this* lawsuit because it does not "aris[e] out of the same transaction, occurrence, or series of transactions or occurrences" that underlie the claims forming the main part of this case – *i.e.*, claims arising out of Redmond's treatment at CCI. *See* Fed. R. Civ. P. 20(a)(1)(A). Accordingly, the new claim against Dr. Kallas will be dismissed without prejudice as improperly joined.

Redmond also may not otherwise proceed with a claim concerning his ability to access other, unspecified programs. In that regard, Redmond's allegations do not demonstrate that he was excluded from any program as the result of a disability. Rather, it appears that Redmond has been excluded from eligibility for additional treatment programs because behavioral issues have resulted in his confinement in disciplinary segregation or clinical observation. Redmond's conclusional assertions do not otherwise show that he was denied access to any particular program because of a disability and are

not sufficient to set forth a claim for violation of the ADA. *See Bryant v. Madigan*, 84 F.3d 246, 249 (7th Cir. 1996) (holding that the ADA is not "violated by a prison's simply failing to attend to the medical needs of its disabled prisoners. No discrimination is alleged; Bryant was not treated worse because he was disabled."). Accordingly, this claim will be dismissed for failure to state a claim upon which relief may be granted.

VI. Counsel

The court notes that Redmond has made a request for recruitment of counsel. (Dkt. # 11). Given the allegations that Redmond suffers from a serious mental illness, as well as other limitations inherent with his status as an indigent inmate, the court concludes that he would benefit from having the assistance of trained legal counsel in this matter. To that end, the court will grant plaintiff's request to recruit volunteer counsel to represent him on a *pro bono* basis.[5] (Dkt. #11.)

The court will not set this case for a pre-trial conference until it has located a volunteer attorney and counsel has filed a formal Notice of Appearance on Redmond's behalf. The case is stayed until such time.

ORDER

IT IS ORDERED that:

1. Plaintiff Rodney Redmond's request to proceed (dkt. #2) is GRANTED IN PART AND DENIED IN PART consistent with the court's explanation above.

[5] In light of the Seventh Circuit's ruling in *Garner v. Sumnicht*, — F. App'x —, 2014 WL 278493 (7th Cir. Jan. 27, 2014), plaintiff's counsel will be afforded an opportunity to submit an amended complaint, if appropriate, to correct the deficiencies outlined above.

2. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

3. Plaintiff's motion for recruitment of counsel (dkt. # 11) is GRANTED.

4. The court will not set this case for a pre-trial conference until it has located a volunteer attorney and counsel has filed a formal Notice of Appearance on plaintiff's behalf. The case is STAYED until such time.

Entered this 6th day of February, 2014.

BY THE COURT:

/s/

_____
WILLIAM M. CONLEY
District Judge